



Department of Energy
Acquisition Regulation

No. 92-8R

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ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) Subpart 901.301-71.

NOTICE

AL 98-8 was distributed without assignment of numbers for the specified solicitation provision and contract clause. Due to the confusion caused by this, AL 92-8R is issued to replace the earlier AL. The earlier version should be discarded.

CONTENTS

DEAR	TITLE
970.0407	Record retention requirements.
970.0407-1	Alternate retention schedules.
970.0407-2	Ownership of records.
970.5204-AL 92-8R.[1]	Ownership of records provision.
970.5204-AL 92-8R.[2]	Ownership of records clause.

I. PURPOSE.

This AL provides guidance regarding ownership of records and systems of records under management and operating contracts.

II. BACKGROUND.

Management and operating contracts are agreements wherein the DOE acquires the services of a management team for the operation of a major DOE owned or controlled facility. The management and operating team and the DOE maintain a special relationship with one another and the work is conducted separate from the contractor's other business.

This relationship, along with unusual aspects of the facilities, such as environmental, safety, and health concerns due to the presence of toxic and radioactive materials, led to some unusual relations between the M&O contractor and DOE in a number of areas. Ownership of records is one of those areas. Since the Government reimburses the costs incurred by the contractor in creating these records, one would expect such records to be

considered Government property. However, Government ownership of certain records may be inconsistent with the usual employer/employee relationship, and the Government's need for ownership of certain records may be questionable.

In certain circumstances, the contractor may wish to claim ownership of certain records, e.g. communications between its DOE management team and its corporate headquarters or its legal counsel. Contracting Officers may agree to contractor ownership of certain categories of records so long as such agreements do not limit the Government's necessary right to audit, inspect and copy various types of records pertinent to the contract in order to protect the public interest.

Since many site employees spend much of their working lives on the site, it is important that records of their earned benefits be retained even if a succession of management contractors have operated the site. Likewise, the potential consequences of exposures to radiation and toxic materials at the site demand that records be kept of not only current employees but former employees of the current contractor and employees/former employees of former contractors.

In such circumstances, the contracting officer shall include the clause at 970.5204-AL 92-8R.[2], Ownership of records. Notwithstanding 970.5202, Deviations, any change in the text of the clause shall be treated as a deviation requiring the concurrence of the Director, Office of Clearance and Support, Office of Procurement, Assistance and Program Management. All such contracts shall also include the clauses at 970.5203-2, Inspection of Records by the Comptroller General, and 970.5204-9, Accounts, records, and inspection. Such agreements shall ensure that the Government's necessary rights to audit, access and copy are preserved.

III. GUIDANCE.

The contracting officer shall include the provision at 970.5204.AL 92-8R.[1] Ownership of records notice, and the clause at 970.5204-AL 92-8R.[2], Ownership of records in all solicitations and contracts for management and operating services. All such contracts shall also contain the clauses at 970.5203-2, Examination of records by the Comptroller General, and 970.5204-9, Accounts, records, and inspection.

IV. Effective Date.

This AL is effective upon the date of issue shown.

V. Expiration Date.

This AL Revision will expire thirty (30) days after the date of publication of a final rule in the Federal Register implementing these changes in the DEAR, unless otherwise superseded.

This AL Revision supersedes AL 92-8 in its entirety.

PART 970 — MANAGEMENT AND OPERATING CONTRACTS. (AMENDED)

1. The existing text of 970.0407 is revised and redesignated 970.0407-1, Alternate retention schedules, and a new 970.0407-2, Ownership of records, is added. Subsection 970.0407, Record retention requirements, as revised, will read as follows:

970.0407 Record retention requirements.

970.0407-1 Alternate retention schedules.

Records produced under management and operating contracts are to be retained and disposed of in accordance with the requirements of DOE Order 1324.2A, Records Disposition, as amended, rather than those set forth at subpart 4.7 of the Federal Acquisition Regulation. These alternate records retention schedules apply to other types of contracts or subcontracts if they involve significant management and operation responsibilities relative to a DOE-owned or -leased facility.

970.0407-2 Ownership of records.

(a) In certain circumstances, the contractor may wish to claim ownership of certain records, e.g. communications between its DOE management team and its corporate headquarters or its legal counsel. Contracting Officers may agree to contractor ownership of certain categories of records so long as such agreements do not limit the Government's necessary right to audit, inspect and copy records pertinent to the contract in order to protect the public interest. The contracting officer shall use the solicitation provision at 970.5204-AL 92-8R.[1], Ownership of records notice, and the contract clause at 970.5204-AL 92-8R.[2], Ownership of records. All contracts shall also include the clauses at 970.5203-2, Inspection of records by the Comptroller General, and 970.5204-9, Accounts, records, and inspection. Such agreements shall ensure that the Government's necessary rights to audit, access and copy are preserved with respect to the preceding two clauses as well as the clauses at:

- 970.5204-2 Safety and health (Government-owned or leased facilities).
- 970.5204-26 Nuclear facility safety applicability.
- 970.5204-41 Preservation of individual occupational radiation exposure records.

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2. Subsections 970.5204-AL 92-8R.[1], Ownership of records provision, and 970.5204-AL 92-8R.[2], Ownership of records clause, are added to read as follows:

970.5204-AL 92-8R.[1] Ownership of records notice.

As prescribed in 970.0407-2, insert the following provision in solicitations for management and operating contracts.

OWNERSHIP OF RECORDS NOTICE (NOV 1992)

In addition to its audit and inspection rights under the contract, the Government must ensure that records, including those generated under the contract relating to employee welfare, (such as safety, health, and fringe benefits), the facilities condition, and environmental impacts, be retained under special conditions, including transfer to the Government or a successor contractor, at such time as the contractor might conclude operation of the facility. Accordingly, special records retention standards, described at DOE Order 1324.2A, RECORDS DISPOSITION, will apply to any resulting contract. However, the contractor may be allowed to assert ownership of certain records under conditions set forth at the clause entitled "Ownership of records." Should the offeror identify a need to assert ownership of certain records under a contract resulting from this solicitation, its proposal must identify such records and provide supporting rationale for its assertion.

970.5204-AL 92-8R.[2] Ownership of records clause.

As prescribed in 970.0407-2, insert the following clause in all management and operating contracts. Records which are to belong to the contractor will be identified in paragraph (b) of the clause, if none, so state. Notwithstanding 970.5202, Deviations, any change in the text of the clause will be considered a deviation requiring the concurrence of the Director, Office of Clearance and Support, Headquarters.

OWNERSHIP OF RECORDS (NOV 1992)

(a) Government's Records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the

contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting

officer shall direct upon completion or termination of the contract.

(b) Contractor's Own Records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) above.

[Identify here any records to be owned by the contractor, if none, enter none.] In the event of completion or termination of this contract, copies of any such contractor's own records shall be, unless prohibited by law, delivered to DOE or its designees.

(c) Inspection, Copying, and Audit of Records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) above, shall be subject to inspection, copying, and audit by the Government at all reasonable times, and the contractor shall afford the Government reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit.

(d) Applicability. The provisions of paragraphs (b) and (c) of this clause apply to all records described therein without regard to the date or origination of any such record.

(e) Records Retention Standards. Special records retention standards, described at DOE Order 1324.2A, Records Disposition, as amended, are applicable, for the classes of records described therein.

(f) Flowdown. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

- (1) the value of the contract is greater than \$2 million, (unless specifically waived by the contracting officer);
- (2) the contracting officer determines that the subcontract is, or involves, a critical task related to the contract, or,
- (3) the subcontract includes any of the following, or similar, clauses:
 - 970.5204-2 Safety and health (Government-owned or leased facilities).
 - 970.5204-26 Nuclear facility safety applicability.
 - 970.5204-41 Preservation of individual occupational radiation exposure records.